

AMENDED IN ASSEMBLY FEBRUARY 7, 2017

CALIFORNIA LEGISLATURE—2017–18 REGULAR SESSION

**ASSEMBLY BILL**

**No. 77**

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**Introduced by Assembly Member Fong  
(Principal coauthor: Assembly Member Gallagher)**

January 4, 2017

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An act to amend Sections 11343.4 and 11349.3 of the Government Code, relating to regulations.

LEGISLATIVE COUNSEL’S DIGEST

AB 77, as amended, Fong. Regulations: effective dates and legislative review.

The Administrative Procedure Act governs the procedure for the adoption, amendment, or repeal of regulations by state agencies and for the review of those regulatory actions by the Office of Administrative Law. That act requires an agency, prior to submitting a proposal to adopt, amend, or repeal an administrative regulation, to determine the economic impact of that regulation, in accordance with certain procedures. The act defines a major regulation as a regulation that the agency determines has an expected economic impact on California business enterprises and individuals estimated to exceed \$50,000,000. The act requires the office to transmit a copy of a regulation to the Secretary of State for filing if the office approves the regulation or fails to act on it within 30 days. The act provides that a regulation or an order of repeal of a regulation becomes effective on a quarterly basis, as prescribed, except in specified instances, including if a regulation adopted by the Fish and Game Commission requires a different effective date to conform with federal law.

This bill would require the office to submit to each house of the Legislature for review a copy of each major regulation that it submits to the Secretary of State. ~~The bill would eliminate the quarterly schedule pursuant to which regulations and orders of repeal become effective, as well as the provisions specifically addressing the effective dates of regulations adopted by the Fish and Game Commission. The bill would, instead, provide that a regulation or order of repeal required to be filed with the Secretary of State generally becomes effective the 90th day after the date of filing, subject to certain exceptions. The bill would add another exception to those currently provided that specifies that a regulation does not become effective if the Legislature passes *enacts* a statute to override the regulation.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     ~~SECTION 1. Section 11343.4 of the Government Code, as~~  
2     ~~amended by Section 26 of Chapter 546 of the Statutes of 2016, is~~  
3     ~~amended to read:~~  
4     ~~11343.4. A regulation or an order of repeal required to be filed~~  
5     ~~with the Secretary of State shall become effective on the 90th day~~  
6     ~~after the date of filing unless any of the following occur:~~  
7     ~~(a) The statute pursuant to which the regulation or order of~~  
8     ~~repeal was adopted specifically provides otherwise, in which event~~  
9     ~~it becomes effective on the day prescribed by the statute.~~  
10    ~~(b) A later date is prescribed by the state agency in a written~~  
11    ~~instrument filed with, or as part of, the regulation or order of repeal.~~  
12    ~~(c) The agency makes a written request to the office~~  
13    ~~demonstrating good cause for an earlier effective date, in which~~  
14    ~~case the office may prescribe an earlier date.~~  
15    ~~(d) The Legislature passes a statute to override the regulation.~~  
16    ~~SECTION 1. Section 11343.4 of the Government Code is~~  
17    ~~amended to read:~~  
18    ~~11343.4. (a) Except as otherwise provided in subdivision (b),~~  
19    ~~a regulation or an order of repeal required to be filed with the~~  
20    ~~Secretary of State shall become effective on a quarterly basis as~~  
21    ~~follows:~~  
22    ~~(1) January 1 if the regulation or order of repeal is filed on~~  
23    ~~September 1 to November 30, inclusive.~~

(2) April 1 if the regulation or order of repeal is filed on December 1 to February 29, inclusive.

(3) July 1 if the regulation or order of repeal is filed on March 1 to May 31, inclusive.

(4) October 1 if the regulation or order of repeal is filed on June 1 to August 31, inclusive.

(b) The effective dates in subdivision (a) shall not apply in all of the following:

(1) The effective date is specifically provided by the statute pursuant to which the regulation or order of repeal was adopted, in which event it becomes effective on the day prescribed by the statute.

(2) A later date is prescribed by the state agency in a written instrument filed with, or as part of, the regulation or order of repeal.

(3) The agency makes a written request to the office demonstrating good cause for an earlier effective date, in which case the office may prescribe an earlier date.

(4) (A) A regulation adopted by the Fish and Game Commission that is governed by Article 2 (commencing with Section 250) of Chapter 2 of Division 1 of the Fish and Game Code.

(B) A regulation adopted by the Fish and Game Commission that requires a different effective date in order to conform to a federal regulation.

(5) *When the Legislature enacts a statute to override the regulation.*

SEC. 2. Section 11349.3 of the Government Code is amended to read:

11349.3. (a) (1) The office shall either approve a regulation submitted to it for review and transmit it to the Secretary of State for filing or disapprove it within 30 working days after the regulation has been submitted to the office for review. If the office fails to act within 30 days, the regulation shall be deemed to have been approved and the office shall transmit it to the Secretary of State for filing.

(2) The office shall submit a copy of each major regulation submitted to the Secretary of State pursuant to paragraph (1) to each house of the Legislature for review.

(b) If the office disapproves a regulation, it shall return it to the adopting agency within the 30-day period specified in subdivision (a) accompanied by a notice specifying the reasons for disapproval.

1 Within seven calendar days of the issuance of the notice, the office  
2 shall provide the adopting agency with a written decision detailing  
3 the reasons for disapproval. No regulation shall be disapproved  
4 except for failure to comply with the standards set forth in Section  
5 11349.1 or for failure to comply with this chapter.

6 (c) If an agency determines, on its own initiative, that a  
7 regulation submitted pursuant to subdivision (a) should be returned  
8 by the office prior to completion of the office's review, it may  
9 request the return of the regulation. All requests for the return of  
10 a regulation shall be memorialized in writing by the submitting  
11 agency no later than one week following the request. Any  
12 regulation returned pursuant to this subdivision shall be resubmitted  
13 to the office for review within the one-year period specified in  
14 subdivision (b) of Section 11346.4 or shall comply with Article 5  
15 (commencing with Section 11346) prior to resubmission.

16 (d) The office shall not initiate the return of a regulation pursuant  
17 to subdivision (c) as an alternative to disapproval pursuant to  
18 subdivision (b).